

REMARKS

The pending Office Action addresses claims 1-93. Claims 25, 29, 32, 39-44, 47, and 49-85 are withdrawn. Remaining claims 1-24, 26-28, 30, 31, 33-38, 45, 46, 48, and 86-93 stand rejected.

Amendments to the Claims

Claim 1 is amended to include the limitations of claim 2, and claim 26 is amended to include the limitations of claim 45. Claims 2 and 45 are canceled. Claims 14 and 27 are amended to remove a limitation. Claim 86 is amended to include a limitation from claim 89, and claim 89 is amended to delete the limitation added to claim 86.

Applicants also cancel withdrawn claims 55-85. Applicants reserve the right to pursue these claims in a divisional application.

No new matter is added.

Provisional Double Patenting Rejection

The Examiner provisionally rejects claims 1, 3-5, 14-19, 22, and 23 under the judicially created doctrine of double patenting over claims 1-8 and 12-14 of co-pending Application No. 10/409,958. A provisional terminal disclaimer is filed herewith, thereby obviating the basis for this rejection.

Further, the Examiner has indicated that claims 26-30 conflict with claims 19-23 of Application No. 10/409,958. Independent claim 26 is amended, thus obviating the basis for this rejection.

Rejections Pursuant to 35 U.S.C. §102

(1) U.S. Patent No. 5,423,826 of Coates

Claims 1-5, 11-13, 15-23, 26, 28, 30, 31, 36-38, 45, 46, 48, and 86-93 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,423,826 of Coates. The Examiner

argues that Coates discloses a guide device substantially as claimed. Applicants respectfully disagree.

Independent claim 1 is directed to a guide device for use with a spinal implant. The guide device includes an elongate support member and first and second arms each having a proximal end coupled to the elongate support member and a distal end. At least one of the first and second arms is slidably movable along the support member to allow a distance between the first and second arms to be adjusted. Further, at least one of the first and second arms includes a guide member coupled to a distal end thereof and having at least one pathway formed therein for receiving a tool. The guide member is adapted to be juxtapositioned on a spinal implant such that the at least one pathway in the guide member is aligned with a corresponding bore formed in the implant.

Coates does not teach or suggest a guide device having an arm that is *slidably* movable along a support member, as required by independent claim 1. As shown in FIGS. 17 and 19, Coates teaches a drill guide having two arms 151, 152 that are pivotally coupled to one another. A threaded locking rod 155 extends through and threadably mates to the arms 151, 152 such that *rotation* of the locking rod 155 pivots the arms. Neither arm 151, 152 slides along the locking rod 155. Applicants refer the Examiner to the definition of the term "slide" from Merriam-Webster Online Dictionary (www.m-w.com), which means to move smoothly along a surface. The arms 151, 152 of the Coates device do not slide along the locking rod 155, but rather move through the rotation of the mated threaded surfaces on the locking rod 155 and the pivot pins 156. Independent claim 1, as well as claims 2-5, 11-13, and 15-23, which depend therefrom, therefore distinguishes over Coates.

Independent claim 26, like claim 1, requires a guide member having a second arm with a first end adapted to slidably mate with and extend in a direction transverse to an elongate support. As stated above with regard to claim 1, Coates does not teach or suggest an arm that is *slidably* mated to an elongate support. Thus, claim 26 likewise distinguishes over Coates. Claim 26 further requires an adjustment mechanism formed on the second member and effective to allow slidable movement of the second member along the elongate support of the first member. Coates does not teach or even suggest an adjustment member formed on a second member as recited in claim 26. The locking mechanism 153 of the device taught in Coates is not formed on either of the arms 151, 152. Rather,

the locking mechanism 153 includes components, such as the rod 155, that are disposed through the arms 151, 152, but not formed on them. Accordingly, independent claim 26 further distinguishes over Coates. Claims 28, 30, 31, 36-38, 46, and 48 are allowable at least because they depend from allowable claim 26.

Independent claim 86 is directed to a guide device for use with a spinal fixation plate. The device includes first and second guide members adapted to be juxtaposition on proximal and distal portions of a spinal fixation plate. Each guide member includes first and second pathways formed therein for receiving a tool, and opposed tabs extending distally therefrom and having a shape adapted to match the contour of at least a portion of a perimeter of the spinal fixation plate.

Coates does not teach a guide member having first and second pathways formed therein. Coates teaches that each arm 151, 152 of the device, as shown in FIG. 17, has a foot 157 to engage with a bone plate. Each foot 157 has a single bore 158 formed therein. Thus, each foot 157 does not have *first and second* pathways as recited in claim 86. Independent claim 86, as well as claims 87-90 which depend therefrom, therefore distinguishes over Coates.

Independent claim 91 is directed to a guide device for use with a spinal fixation plate having first and second arms movable with respect to one another, with each arm including a proximal end and a distal end. A first guide member is coupled to the distal end of the first arm, and a second guide member is coupled to the distal end of the second arm. Each guide member has opposed cut-out portions formed therein that are adapted to provide visual access to a spinal fixation plate coupled thereto.

Coates does not teach a guide device having *opposed cut-out portions* formed within a guide member. The term "opposed" implies a cut-out portion placed opposite at least one other cut-out portion. As shown in FIG. 17 of Coates, each arm 151, 152 has a foot 157 which includes only a single bore 158. Thus, each foot 157 does not have *opposed* cut-out portions as required by claim 91. Independent claim 91, as well as claims 92 and 93 which depend therefrom, therefore distinguishes over Coates.

(2) U.S. Patent No. 3,244,170 of McElvenny

Claims 1, 3, 4, 6, 7, 8, 9, 10, 14, 19, 21-24, 26, 27, 30, 31, and 37 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,244,170 of McElvenny. As noted above, independent claim 1 is amended include limitations of claim 2, thus obviating the basis for this rejection. Likewise, claim 26 is amended to include limitations of claim 45, thus obviating the basis for this rejection. Accordingly, independent claims 1 and 26, as well as claims 3, 4, 6, 7, 8, 9, 10, 14, 19, 21-24, 27, 30, 31, and 37 which depend therefrom, distinguish over McElvenny.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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